

ORIGINAL

## OPEN MEETING



### MEMORANDUM

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TO: THE COMMISSION

Arizona Corporation Commission  
DOCKETED

2013 FEB 28 P 2:57

FROM: Utilities Division

FEB 28 2013

AZ CORP COMMISSION  
DOCKET CONTROL

DATE: February 28, 2013

DOCKETED  
*SM*

RE: IN THE MATTER OF THE APPLICATION OF CCG COMMUNICATIONS LLC  
FOR AN ORDER AUTHORIZING THE ENCUMBRANCE OF ITS ASSETS.  
(DOCKET NO. T-04290A-13-0006)

### Introduction

On January 8, 2013, CCG Communications, LLC ("CCG") filed an application seeking expedited approval by the Arizona Corporation Commission ("Commission"), pursuant to A.R.S. § 40-285 and any other applicable statutes or rules, to encumber CCG's Arizona assets in connection with certain financing arrangements to be entered into by LTS Buyer LLC ("LTS Buyer").

The financing arrangements are being undertaken in connection with LTS Buyer's proposed acquisitions of Light Tower Holdings LLC ("Light Tower") (CCG, Light Tower and LTS Buyer collectively, the "Parties") and its subsidiaries and Yankee Metro Partners, LLC ("Yankee") and its subsidiaries. The participation of CCG in the financing arrangements of LTS Buyer is contingent on the completion of the LTS Buyer Transactions.

Staff recommends approval of CCG's Application as discussed below.

### Background of Applicants

CCG is a Massachusetts limited liability company and indirect, wholly-owned subsidiary of Light Tower, a Delaware limited liability company. CCG and Light Tower have principal offices located at 80 Central Street, Boxborough, Massachusetts 01719. In Arizona, CCG is authorized to provide facilities-based local exchange services pursuant to Decision No. 67883 issued by the Commission in Docket No. T-04290A-04-0838 on June 1, 2005.<sup>1</sup>

LTS Buyer is an indirect, wholly owned subsidiary of LTS Group Holdings LLC ("LTS Holdings"). Both LTS Buyer and LTS Holdings are Delaware limited liability companies created

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<sup>1</sup> The Applicant noted that the Commission recently authorized the pro forma transfer of CCG's Certificate of Convenience (CC&N) to its affiliate, Lexent, Inc., in Decision No. 73581. The Applicant states that the pro forma merger of CCG with and into Lexent, with Lexent as the surviving entity has not occurred yet. The pro forma merger according to the Applicant, may occur at some time following the completion of the LTS Buyer Transactions.

for purposes of the LTS Buyer Transactions with principal offices located at c/o Berkshire Partners LLC, 200 Clarendon Street, 35th Floor, Boston, Massachusetts 02116. LTS Holdings has no majority owner, but certain investment funds and entities controlled and/or managed by a number of investors, including Berkshire Partners LLC (“Berkshire”), ABRY Partners LLC (“ABRY”), HarbourVest Partners, LLC (“HarbourVest”), and Pamlico Capital (“Pamlico”), together with certain executive officers of LTS Holdings and other minority investors, will own the equity of LTS Holdings.

The business and affairs of LTS Holdings and its subsidiaries will be managed by a seven-member board of managers consisting of four members designated by Berkshire, one member designated by ABRY, one member designated by Pamlico, and Robert J. Shanahan, the current Chief Executive Officer of Light Tower. Mr. Shanahan will serve as Chief Executive Officer of LTS Holdings and will be supported by a team of management personnel with substantial experience in the telecommunications industry.

#### **Description of The Transaction**

Pursuant to an Agreement and Plan of Merger, dated December 22, 2012, LTS Buyer will acquire control of CCG, through its acquisition of all of the ownership interests of Light Tower (the “Light Tower Transaction”). LTS Buyer simultaneously entered into an Agreement and Plan of Merger, also dated December 22, 2012, to acquire control of Yankee (the “Yankee Transaction”). The LTS Buyer Transactions are the combined Light Tower Transaction and the Yankee Transaction.

The Parties anticipate that the total amount of funds necessary to complete the LTS Buyer Transactions will be approximately \$2.1 billion. In related transactions, LTS Buyer and certain of its wholly-owned U.S. subsidiaries designated as co-borrowers or co-issuers expect to obtain debt financing in an aggregate amount of up to \$1.6 billion. The debt financing may consist of one or more secured and unsecured credit facilities and/or unsecured notes, in an expected aggregate amount of up to \$1.475 billion and sufficiently (together with equity contributions) to finance the LTS Buyer Transactions including repaying the existing debt of Light Tower and Yankee.

The debt financing may include commitments for a senior secured revolving credit facility in an expected aggregate amount of up to \$125 million, available on the closing date of the LTS Buyer Transactions for the financing thereof and general working capital, and after the closing date for purposes of financing working capital and general corporate purposes. To maintain financial flexibility, CCG seeks approval to participate in debt financing in an aggregate amount of up to \$1.6 billion.

The specific maturity date for any debt instruments issued in connection with the financing will be subject to negotiation and will depend on credit conditions at the time they are priced and issued. The Parties anticipate that the debt financing will consist solely of long-term indebtedness. In the event that the borrowers incur bridge loans as a “bridge” to long-term

indebtedness, the bridge loans will likely mature one (1) year after issuance. The Parties expect any long-term indebtedness incurred to mature no later than ten (10) years after issuance depending on the type of facility.

The interest rate will likely be the market rate for similar financings and will not be determined until the financing arrangements are finalized. Depending on the type of debt securities, credit facilities or other arrangements, the interest rate(s) will be either a fixed rate (typically set at signing or closing based on then current rate index such as LIBOR or Federal Funds Rate, along with an applicable margin rate) or a floating rate (consisting of a base rate, which will float with a rate index such as LIBOR or Federal Funds Rate, plus an applicable margin), or a combination of fixed rates and floating rates, depending on credit conditions at the time they are priced and issued.

It is expected that (i) the obligations of LTS Buyer and any co-borrowers or co-issuers under any credit facilities or notes will be unconditionally guaranteed by LTS Buyer and each of its existing and future U.S. wholly-owned subsidiaries (with certain exceptions including immaterial subsidiaries and “unrestricted” subsidiaries), including Light Tower and Yankee and their subsidiaries, and, in the case of any secured credit facilities, LTS Intermediate Holdings C LLC; and (ii) the obligations of LTS Buyer and any co-borrowers under any secured credit facilities, together with obligations under the guarantees, will be secured by a security interest in substantially all of the assets of LTS Buyer, the co-borrowers and guarantors, in each case, now owned or later acquired, including a pledge of all or substantially all of the capital stock or membership units of LTS Buyer and its U.S. wholly-owned subsidiaries, and 65% of the capital stock or membership units of certain of its foreign subsidiaries, subject in each case to the exclusion of certain assets and additional exceptions, including exceptions related to “unrestricted” subsidiaries. Upon completion of the LTS Buyer Transactions, therefore, CCG will provide a guaranty and related pledge of substantially all of its assets as security for all or some of the debt financing in an aggregate amount of up to \$1.6 billion. In addition to the above-described debt financing arrangements, new and rollover equity will provide the financing for the remainder of funds required to acquire each of Light Tower and Yankee.

CCG’s Application states that participation in the financing arrangement will not adversely affect its current or proposed operations in the State of Arizona. Accordingly, CCG requests that the Commission approve CCG to encumber its Arizona assets as security for the financing arrangements.

### **Staff’s Analysis**

CCG is not a Class A utility, therefore, A.A.C. R14-2-801, et seq. (the “Affiliated Interests Rules”) do not apply in this matter.<sup>2</sup>

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<sup>2</sup> CCG does not currently serve Arizona customers and thus it reported no Arizona Intrastate Revenues in its 2011 Utilities Annual Report

However, A.R.S. § 40-285 does apply to this transaction. A.R.S. 40-285 provides in relevant part:

“A public service corporation shall not sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, line, plant or system necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor shall such corporation merge such system or any part thereof with any other public service corporation without first having secured from the commission an order authorizing it to do so. Every such disposition, encumbrance or merger made other than in accordance with the order of the Commission authorizing it is void.”

. The statute serves to protect captive customers from a utility’s act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service.

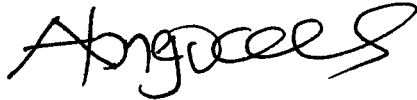
Staff does not believe the proposed transactions will negatively impact the operations of CCG. The Applicant states that the transactions proposed in this Application should be seamless and transparent to customers. The proposed transaction will not result in a change to CCG’s tariffed rates or terms and conditions. Following this transaction, the same personnel who manage CCG’s services will continue their roles and there will be no change in the network assets used to provide CCG’s services. The LTS Buyer Transactions will enhance the ability of CCG to compete effectively in the medium and large enterprise carrier and data center markets, which CCG states are subject to significant competitive forces, including participation by incumbent carriers.

It is important that customer deposits not be encumbered as part of the proposed transaction. CCG indicated in email communications with Staff that customer deposits will not be encumbered as part of the proposed transaction. Given that the Commission on November 21, 2012, in Decision No. 73581 approved the pro forma transfer of CCG’s CC&N to Lexent, Staff believes this condition should also apply to Lexent when the pro forma merger of CCG with and into Lexent occurs.

CCG published a Legal Notice in the Arizona Republic newspaper on February 1, 2012. No Party has filed comments or sought intervention in this matter.

**Staff's Recommendations**

Staff recommends approval of the proposed transaction with the condition that all CCG customer deposits and prepayments be excluded from the proposed transaction. In addition, once the merger of CCG with and into Lexent occurs, Lexent shall be subject to this same condition.



for

Steven M. Olea  
Director  
Utilities Division

SMO:AFF:sms/MAS

ORIGINATOR: Armando F. Fimbres

1                                   **BEFORE THE ARIZONA CORPORATION COMMISSION**

2   BOB STUMP

Chairman

3   GARY PIERCE

Commissioner

4   BRENDA BURNS

Commissioner

5   BOB BURNS

Commissioner

6   SUSAN BITTER SMITH

Commissioner

7  
8   IN THE MATTER OF THE APPLICATION  
9   OF CCG COMMUNICATIONS LLC FOR  
10  AN ORDER AUTHORIZING THE  
11  ENCUMBRANCE OF ITS ASSETS.

DOCKET NO. T-04290A-13-0006

DECISION NO. \_\_\_\_\_

ORDER

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14   Open Meeting  
15   March 12 and March 13, 2013  
16   Phoenix, Arizona

17   BY THE COMMISSION:

18   FINDINGS OF FACT

19   Introduction.

20           1.     On January 8, 2013, CCG Communications, LLC ("CCG") filed an application  
21   seeking approval by the Arizona Corporation Commission ("Commission"), pursuant to A.R.S. §  
22   40-285 and any other applicable statutes or rules, for approval to encumber CCG's Arizona assets  
23   in connection with certain financing arrangements to be entered into by LTS Buyer LLC ("LTS  
24   Buyer").

25           2.     The financing arrangements are being undertaken in connection with LTS Buyer's  
26   proposed acquisitions of Light Tower Holdings LLC ("Light Tower") (CCG, Light Tower and  
27   LTS Buyer collectively, the "Parties") and its subsidiaries and Yankee Metro Partners, LLC  
28   ("Yankee") and its subsidiaries. The participation of CCG in the financing arrangements of LTS  
Buyer is contingent on the completion of the LTS Buyer Transactions.

**Background of Applicants**

3. CCG is a Massachusetts limited liability company and indirect, wholly-owned subsidiary of Light Tower, a Delaware limited liability company. CCG and Light Tower have principal offices located at 80 Central Street, Boxborough, Massachusetts 01719. In Arizona, CCG is authorized to provide facilities-based local exchange services pursuant to Decision No. 67883 issued by the Commission in Docket No. T- 04290A-04-0838 on June 1, 2005.<sup>1</sup>

4. LTS Buyer is an indirect, wholly owned subsidiary of LTS Group Holdings LLC ("LTS Holdings"). Both LTS Buyer and LTS Holdings are Delaware limited liability companies created for purposes of the LTS Buyer Transactions with principal offices located at c/o Berkshire Partners LLC, 200 Clarendon Street, 35th Floor, Boston, Massachusetts 02116. LTS Holdings has no majority owner, but certain investment funds and entities controlled and/or managed by a number of investors, including Berkshire Partners LLC ("Berkshire"), ABRY Partners LLC ("ABRY"), HarbourVest Partners, LLC ("HarbourVest"), and Pamlico Capital ("Pamlico"), together with certain executive officers of LTS Holdings and other minority investors, will own the equity of LTS Holdings.

5. The business and affairs of LTS Holdings and its subsidiaries will be managed by a seven-member board of managers consisting of four members designated by Berkshire, one member designated by ABRY, one member designated by Pamlico, and Robert J. Shanahan, the current Chief Executive Officer of Light Tower. Mr. Shanahan will serve as Chief Executive Officer of LTS Holdings and will be supported by a team of management personnel with substantial experience in the telecommunications industry.

**Description of The Transaction**

6. Pursuant to an Agreement and Plan of Merger, dated December 22, 2012, LTS Buyer will acquire control of CCG, through its acquisition of all of the ownership interests of Light Tower (the "Light Tower Transaction"). LTS Buyer simultaneously entered into an

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<sup>1</sup> The Applicant noted that the Commission recently authorized the pro forma transfer of CCG's Certificate of Convenience and Necessity ("CC&N") to its affiliate, Lexent, Inc., in Decision No. 73581. The Applicant states that the pro forma merger of CCG with and into Lexent, with Lexent as the surviving entity has not occurred yet. The pro forma merger according to the Applicant, may occur at some time following the completion of the LTS Buyer Transactions.

1 Agreement and Plan of Merger, also dated December 22, 2012, to acquire control of Yankee (the  
2 "Yankee Transaction"). The LTS Buyer Transactions are the combined Light Tower Transaction  
3 and the Yankee Transaction.

4 7. The Parties anticipate that the total amount of funds necessary to complete the LTS  
5 Buyer Transactions will be approximately \$2.1 billion. In related transactions, LTS Buyer and  
6 certain of its wholly-owned U.S. subsidiaries designated as co-borrowers or co-issuers expect to  
7 obtain debt financing in an aggregate amount of up to \$1.6 billion. The debt financing may consist  
8 of one or more secured and unsecured credit facilities and/or unsecured notes, in an expected  
9 aggregate amount of up to \$1.475 billion and sufficiently (together with equity contributions) to  
10 finance the LTS Buyer Transactions including repaying the existing debt of Light Tower and  
11 Yankee.

12 8. The debt financing may include commitments for a senior secured revolving credit  
13 facility in an expected aggregate amount of up to \$125 million, available on the closing date of the  
14 LTS Buyer Transactions for the financing thereof and general working capital, and after the  
15 closing date for purposes of financing working capital and general corporate purposes. To maintain  
16 financial flexibility, CCG seeks approval to participate in debt financing in an aggregate amount of  
17 up to \$1.6 billion.

18 9. The specific maturity date for any debt instruments issued in connection with the  
19 financing will be subject to negotiation and will depend on credit conditions at the time they are  
20 priced and issued. The Parties anticipate that the debt financing will consist solely of long-term  
21 indebtedness. In the event that the borrowers incur bridge loans as a "bridge" to long-term  
22 indebtedness, the bridge loans will likely mature one (1) year after issuance. The Parties expect  
23 any long-term indebtedness incurred to mature no later than ten (10) years after issuance  
24 depending on the type of facility.

25 10. The interest rate will likely be the market rate for similar financings and will not be  
26 determined until the financing arrangements are finalized. Depending on the type of debt  
27 securities, credit facility(ies) or other arrangements, the interest rate(s) will be either a fixed rate  
28 (typically set at signing or closing based on then current rate index such as LIBOR or Federal



1 Funds Rate, along with an applicable margin rate) or a floating rate (consisting of a base rate,  
2 which will float with a rate index such as LIBOR or Federal Funds Rate, plus an applicable  
3 margin), or a combination of fixed rates and floating rates, depending on credit conditions at the  
4 time they are priced and issued.

5 11. It is expected that (i) the obligations of LTS Buyer and any co-borrowers or co-  
6 issuers under any credit facilities or notes will be unconditionally guaranteed by LTS Buyer and  
7 each of its existing and future U.S. wholly-owned subsidiaries (with certain exceptions including  
8 immaterial subsidiaries and “unrestricted” subsidiaries), including Light Tower and Yankee and  
9 their subsidiaries, and, in the case of any secured credit facilities, LTS Intermediate Holdings C  
10 LLC; and (ii) the obligations of LTS Buyer and any co-borrowers under any secured credit  
11 facilities, together with obligations under the guarantees, will be secured by a security interest in  
12 substantially all of the assets of LTS Buyer, the co-borrowers and guarantors, in each case, now  
13 owned or later acquired, including a pledge of all or substantially all of the capital stock or  
14 membership units of LTS Buyer and its U.S. wholly-owned subsidiaries, and 65% of the capital  
15 stock or membership units of certain of its foreign subsidiaries, subject in each case to the  
16 exclusion of certain assets and additional exceptions, including exceptions related to “unrestricted”  
17 subsidiaries. Upon completion of the LTS Buyer Transactions, therefore, CCG will provide a  
18 guaranty and related pledge of substantially all of its assets as security for all or some of the debt  
19 financing in an aggregate amount of up to \$1.6 billion. In addition to the above-described debt  
20 financing arrangements, new and rollover equity will provide the financing for the remainder of  
21 funds required to acquire each of Light Tower and Yankee.

22 12. CCG’s Application state’s that participation in the financing arrangement will not  
23 adversely affect its current or proposed operations in the State of Arizona. Accordingly, CCG  
24 requests that the Commission approve CCG to encumber its Arizona assets as security for the  
25 financing arrangements.

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**Staff's Analysis and Conclusions**

13. CCG is not a Class A utility, therefore, A.A.C. R14-2-801, et seq. (the "Affiliated Interests Rules") do not apply in this matter.<sup>2</sup>

14. However, A.R.S. § 40-285 does apply to this transaction. A.R.S. 40-285 provides in relevant part:

"A public service corporation shall not sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, line, plant or system necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor shall such corporation merge such system or any part thereof with any other public service corporation without first having secured from the commission an order authorizing it to do so. Every such disposition, encumbrance or merger made other than in accordance with the order of the Commission authorizing it is void."

15. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service.

16. Staff does not believe the proposed transactions will negatively impact the operations of CCG. CCG represents that the transactions proposed in this Application should be seamless and transparent. The proposed transaction will not result in a change to CCG's tariffed rates or terms and conditions. Following this transaction, the same personnel who manage CCG's services will continue their roles and there will be no change in the network assets used to provide CCG's services. The LTS Buyer Transactions will enhance the ability of CCG to compete effectively in the medium and large enterprise carrier and data center markets, which CCG states are subject to significant competitive forces, including participation by incumbent carriers.

17. It is important that customer deposits and prepayments not be encumbered as part of the proposed transaction. CCG indicated in email communications with Staff that customer deposits and prepayments will not be encumbered as part of the proposed transaction. Given that the Commission on November 21, 2012, in Decision No. 73581 approved the pro forma transfer of

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<sup>2</sup> CCG does not currently serve Arizona customers and thus it reported no Arizona Intrastate Revenues in its 2011 Utilities Annual Report

1 CCG's CC&N to Lexent, Staff believes that this condition should also apply to Lexent when the  
2 pro forma merger of CCG with and into Lexent occurs.

3 18. CCG published a Legal Notice in the Arizona Republic newspaper on February 1,  
4 2013. No Party has filed comments or sought intervention in this matter.

5 19. Staff recommends approval of the proposed transaction with the condition that  
6 customer deposits and prepayments not be encumbered as part of the proposed transaction. In  
7 addition, once the merger of CCG with and into Lexent occurs, Lexent should be subject to this  
8 same condition.

#### 9 CONCLUSIONS OF LAW

10 1. CCG Communications, LLC is a public service corporation within the meaning of  
11 Article XV of the Arizona Constitution.

12 2. The Commission has jurisdiction over CCG Communications, LLC and the subject  
13 matter in this filing.

14 3. The Commission, having reviewed the filing and Staff's Memorandum dated  
15 February 28, 2013 concludes that it is in the public interest to grant approval discussed herein.

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ORDER

IT IS THEREFORE ORDERED that the Application of CCG Communications, LLC seeking approval to encumber CCG Communications, LLC's Arizona assets pursuant to A.R.S. § 40-285, as described in Findings of Fact 6 to 12 herein, be and hereby is approved.

IT IS FURTHER ORDERED that all CCG Communications, LLC customer deposits and prepayments be excluded from the encumbrance of CCG Communications, LLC's assets proposed in this transaction. Once the pro forma merger of CCG with and into Lexent occurs as authorized by Decision No. 73581, Lexent shall be subject to this same condition.

IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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CHAIRMAN

COMMISSIONER

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COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

SMO:AFF:sms/MAS

1 SERVICE LIST FOR: CCG Communications LLC  
2 DOCKET NO. T-04290A-13-0006

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16 Mace Rosenstein  
17 Yaron Dori  
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24 Boston, MA 02116  
25 Attention: Lawrence S. Hamelsky and Sharlyn C. Heslam

26 Janice Alward  
27 Chief Counsel, Legal Division  
28 Arizona Corporation Commission  
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